**CHOR PHAIK HAR**

**v.**

**FARLIM PROPERTIES SDN BHD**

FEDERAL COURT, PULAU PINANG
EDGAR JOSEPH JR FCJ
MOHAMED DZAIDDIN FCJ
ABU MANSOR ALI JCA
[CIVIL APPEAL NO: 02-333 OF 1993]
5 JULY 1997

***LAND LAW:*** *Restraints on dealings - Caveats - Application for removal - Applicant purchasing land from beneficiaries of an unadministered estate - Whether applicant an aggrieved person - Whether sale and purchase agreement invalid - Whether wrong for applicant to rely on agreement to justify status as an aggrieved party - National Land Code 1965, s. 327*

***LAND LAW:*** *Sale of land - Sale by beneficiaries of an unadministered estate - Whether valid - Whether beneficiaries could acquire title to property before administration completed - Whether beneficiaries could have covenanted to convey title to purchaser of land thereof*

***SUCCESSION:*** *Administration - Sale of land - Sale agreement made by beneficiaries of an unadministered estate - Whether valid - Whether beneficiaries under an intestacy had no interest in the property of a deceased person until estate had been fully administered*

By an agreement dated 4 January 1943 ('the 1943 agreement') entered into between Chor Bah Say ('the deceased') and Choong Lye Hock Estate Sdn Bhd ('the company'), the deceased and the company acquired 3/4 undivided share and 1/4 undivided share respectively of the property known as Ayer Hitam Estate which included two pieces of land ('the said lands'). The deceased died on 9 November 1949 and thereafter his interest under the 1943 agreement devolved to his estate.

On 23 January 1992, the company and the executors and trustees of the beneficiaries of the deceased's estate executed two sale and purchase agreements with the respondent ('the sale agreements'), and by that they agreed to sell the said lands to the respondent for RM32,006,000. The appellant, who was a direct beneficiary of the deceased's estate, and who was party to the sale agreements originally, had later on refused to execute the said agreements alleging that the same contravened the 1943 agreement. A caveat was subsequently lodged by the appellant against the said lands. The respondent

applied to the High Court for the removal of the caveat, wherefore the learned Judge, allowing the application, ruled that by the entry of the caveat, the respondent became an aggrieved person within the meaning of s. 327 of the National Land Code 1965 ('the Code'), and was therefore entitled to apply for its removal.

The appellant appealed and argued: (i) that a beneficiary of an estate of a deceased person has no title or interest in the property thereof until after administration is completed; (ii) that since the deceased's estate was unadministered at the date of the sale agreements, the beneficiaries did not acquire title to the 3/4 undivided share of the said lands at the time of the agreements, and such being the case, they could not have covenanted to convey such title to the respondents under the sale agreements; and (iii) that the sale agreements were thus invalid, and it was therefore wrong of the respondent to have relied on them to justify their status as an aggrieved party under s. 327 of the Code.

The respondent argued that the concept of a residuary beneficiary was limited to the estate of a testate deceased, and did not apply to a beneficiary on intestacy where the interest of a beneficiary of an intestate was predetermined by law.

**Held:**
**Per Mohamed Dzaiddin FCJ**

**[1]** In law, a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate.

**[2]** On the evidence, this Court is satisfied that at the date of the execution of the sale agreements, the administration of the deceased's estate has not been completed. It follows that until his estate has been fully administered by the administrators and distribution made according to law, the beneficiaries have no interest or property in the deceased's estate so as to give them any title to the land. It follows further that the beneficiaries could not have covenanted to convey any title to the respondents under the sale agreements and the respondents, therefore, cannot rely on those agreements to justify their status as "persons aggrieved' under s. 327 of the Code.

**[2a]** The respondents have not satisfied this Court that there are sufficient grounds in law or fact for treating them as persons claiming an interest in the said lands as would, if it were established, make them aggrieved by the existence of the said caveat.

*[Appeal allowed.]*

*[**Bahasa Malaysia** Translation of Headnotes]*

***UNDANG-UNDANG TANAH:*** *Sekatan ke atas urusan-urusan - Kaveat - Permohonan untuk membatalkan - Pemohon membeli tanah daripada benefisiari-benefisiari harta pusaka yang tidak ditadbirkan - Samada pemohon merupakan pihak terkilan - Samada perjanjian jualbeli tak sah - Samada salah bagi pemohon bergantung pada perjanjian bagi mewajarkan status sebagai pihak yang terkilan - Kanun Tanah Negara 1965, s. 327*

***UNDANG-UNDANG TANAH:*** *Penjualan tanah - Penjualan oleh benefisiari-benefisiari harta pusaka yang tidak ditadbirkan - Samada sah - Samada benefisiari-benefisiari boleh memperolehi hak kepada hartanah sebelum pentadbiran disempurnakan - Samada benefisiari-benefisiari boleh berwaad untuk memberi hakmilik kepada pembeli tanah tersebut*

***UNDANG-UNDANG PEWARISAN:*** *Pentadbiran - Penjualan tanah - Perjanjian penjualan di buat oleh benefisiari-benefisiari sebuah harta pusaka yang tidak ditadbirkan - Samada sah - Samada benefisiari-benefisiari di bawah kematian-kematian tidak berwasiat tidak mempunyai kepentingan dalam hartanah seorang yang telah mati sehingga harta pusaka telah ditadbirkan sepenuhnya*

Melalui satu perjanjian bertarikh 4 Januari 19943 ('Perjanjian 1943') yang dimasuki antara Chor Bah Say ('simati') dan Choong Lye Hock Estate Sdn Bhd ('syarikat'), simati dan syarikat telah memperolehi 3/4 bahagian tidak berbahagi dan 1/4 bahagian tidak berbahagi masing-masingnya akan hartanah yang dikenali sebagai Ayer Hitam Estate yang mana termasuk dua bidang tanah ('tanah-tanah tersebut'). Simati telah meninggal dunia pada 9 November 1949 dan selepas itu kepentingannya di bawah perjanjian 1943 tersebut diturunkan kepada harta pusakanya.

Pada 23 Januari 1992, syarikat bersama-sama wasi-wasi serta pemegang amanah bagi benefisiari-benefisiari harta pusaka si mati telah menyempurnakan dua perjanjian jualbeli dengan responden ('perjanjian-perjanjian jualan'), dan menurutnya mereka telah bersetuju untuk menjual tanah-tanah tersebut kepada responden dengan jumlah sebanyak RM32,006,000. Perayu, yang merupakan benefisiari secara langsung akan harta pusaka si mati, dan yang mana merupakan satu pihak kepada perjanjian-perjanjian jualbeli pada asalnya, telah kemudiannya enggan untuk menyempurnakan perjanjian-perjanjian tersebut dengan mendakwa bahawa ianya melanggari perjanjian 1943. Satu kaveat kemudiannya diserah-simpan oleh perayu terhadap tanah-tanah tersebut. Responden telah memohon kepada Mahkamah Tinggi untuk membatalkan kaveat itu, dimana, Hakim yang bijaksana, dalam membenarkan permohonan tersebut telah memutuskan bahawa dengan kemasukan kaveat tersebut,

responden telah menjadi orang yang terkilan dalam lingkungan maksud s. 327 Kanun, dan dengan itu adalah berhak untuk memohon pembatalannya.

Perayu telah merayu dan berhujah (i) bahawa benefisiari sesebuah harta pusaka seorang yang telah mati tidak mempunyai hakmilik atau kepentingan dalam harta pusaka tersebut sehingga selepas pentadbiran disempurnakan atau siap (ii) bahawa oleh kerana harta pusaka si mati tidak ditadbirkan pada tarikh perjanjian jualan, benefisiari-benefisiari telah tidak memperolehi hakmilik kepada 3/4 bahagian yang tidak berbahagi daripada tanah-tanah tersebut pada waktu perjanjian-perjanjian tersebut dibuat, dan oleh kerana keadaannya sedemikian, mereka tidak mungkin boleh berwaad untuk memberikan hakmilik yang sedemikian kepada responden-responden di bawah perjanjian-perjanjian jualan (iii) bahawa perjanjian jualan tersebut adalah dengan itu tak sah, dan dengan itu adalah salah bagi responden bergantung ke atasnya bagi mewajarkan kedudukan mereka sebagai pihak yang terkilan di bawah s. 327 Kanun tersebut.

Responden berhujah bahawa konsep benefisiari bakian adalah terhad kepada harta pusaka simati yang meninggalkan wasiat, dan tidak terpakai kepada benefisiari dalam kematian tidak berwasiat di mana kepentingan seseorang benefisiari dalam kematian tidak berwasiat telah ditentukan pada awalnya oleh undang-undang.

**Diputuskan:**
**Oleh Mohamed Dzaiddin HMP**

**[1]** Di sisi undang-undang, benefisiari dalam kematian tidak berwasiat tidak mempunyai kepentingan atau harta dalam harta pusaka peribadi seseorang yang telah mati sehingga harta pusaka pihak yang terkemudian itu sempurna ditadbirkan dan diagihkan menurut undang-undang pengagihan harta pusaka tidak berwasiat.

**[2]** Berdasarkan keterangan, Mahkamah ini berpuashati bahawa pada tarikh penyempurnaan perjanjian penjualan tersebut, pentadbiran hartapusaka si mati masih belum disempurnakan atau siap. Ianya mengikut bahawa sehingga harta pusaka beliau telah ditadbirkan sepenuhnya oleh pentadbir-pentadbir dan pengagihan dibuat menurut undang-undang, benefisiari-benefisiari tidak mempunyai kepentingan atau hak dalam harta pusaka si mati tersebut sehingga memberi mereka sebarang hak kepada tanah tersebut. Selanjutnya benefisiari-benefisiari tersebut tidak mungkin dapat berwaad untuk memberikan sebarang hak kepada responden-responden di bawah perjanjian jualan itu dan responden, dengan itu, tidak boleh bergantung pada perjanjian-perjanjian tersebut bagi mewajarkan kedudukan mereka sebagai “orang-orang yang terkilan” di bawah s. 327 Kanun.

**[2a]** Responden-responden telah tidak memuaskan Mahkamah ini bahawa terdapatnya alasan-alasan yang mencukupi di sisi undang-undang atau fakta untuk menganggapkan mereka sebagai orang-orang yang menuntut kepentingan dalam tanah-tanah tersebut sepertimana yang akan, jika ianya dibuktikan, menjadikan mereka terkilan dengan wujudnya kaveat tersebut.

*[Rayuan dibenarkan.]*

**Cases referred to:**
*Lord Sudeley v. The Attorney General [1897] AC 11* ***(refd)***
*Dr Barnado's Homes National Incorporated Association v. Commissioners For Special Purposes of the Income Tax Acts [1921] AC 1* ***(refd)***
*Corbett v. Commissioners of Inland Revenue [1938] 1 KB 567* ***(refd)***
*Khoo Teng Seong v. Khoo Teng Peng [1990] 2 CLJ 233* ***(refd)***
*Tan Heng Poh v. Tan Boon Thong & Ors [1992] 2 MLJ 1* ***(refd)***
*Oh Phaik Lin & 2 Ors v. Choong Lye Hock Estate Sdn Bhd [1985] 1 CLJ 280* ***(refd)***
*Eng Mee Yong & Ors v. V Letchumanan [1979] 2 MLJ 212* ***(refd)***

**Legislation referred to:**
National Land Code 1965, s. 327

**Other sources referred to:**
*The Law and Practice of Intestate Succession,* CH Sherrin & Bonehill, p 93
*Executors, Adminsitrators and Probate,* Williams, Mortimer & Sunnecks, 17 edn, 1993, p 1050

*[Appeal from High Court Malaya, Pulau Pinang; Originating Summons No: 24-201-92]*

*For the appellant - N Chandran (Jannu Babjan with him); M/s Lim Cheng Poh, Lim & Rahim*
*For the respondent - RR Sethu (R Rajasingam with him); M/s Rajasingam & Co*

## JUDGMENT

**Mohamed Dzaiddin FCJ:**

This appeal arose from the decision of the High Court Pulau Pinang given on 18 June 1993 granting the respondents' application under s. 327, NLC 1965 (the Code), for the removal of private caveat no. 5040/91 Jilid 282 folio 72 (the said caveat) entered by the appellant on the register documents of title in respect of two pieces of land held under Grant First Grade nos. 4661 and 5650 for Lots no. 1457 and 1835 Mukim 13, North East District Pulau Pinang (the said lands).

The appeal was against the finding of the learned judge that the respondents were "persons aggrieved" within the meaning of s. 327 of the Code, and therefore could apply for the removal of the said caveat.

a ***Factual Background***

The application for the removal of the said caveat originated from an agreement dated 4 January 1943 (1943 agreement) made between Chor Bah Say, deceased, and Choong Lye Hock Estate Ltd., later converted to Choong Lye Hock Estate Sdn. Bhd. (the company). The material terms of the said agreement are as follows:

b

1. The said Chor Bah Say shall without remuneration be in management of the said Otaheite Estate (later known as Ayer Itam Estate) and shall collect all the income, rents and profits thereof and account for the same to the company whenever required to do so.

c

2. The said Chor Bah Say shall sell such part or parts of the said Otaheite Estate as he shall deem fit but he must first obtain the written consent of the company for each such sale, the company to be at liberty to refuse such consent if they consider the price or prices inadequate.

d

3. All moneys to be obtained from the sale or sales of part or all of the said Otaheite Estate shall be paid to the company and shall be applied together with the nett income, rents and profits thereof (after deducting certain specified interest payments, expenses and costs).

e

4. The balance money shall be divided as to three-fourths thereof to the said Chor Bah Say and as to the remaining one-fourth thereof to the company.

f

5. The agreement shall be deemed to commence and take effect on 1 January 1943.

6. The said "Chor Bah Say" shall mean and include his personal representative and the term "the company" shall include their assigns.

g All the lands comprised in the said Ayer Itam Estate were registered in the name of the company as proprietor. Although no trusts were endorsed on the titles, the company held 25% of the lands for itself and 75% for the Estate of Chor Bah Say, who died intestate on 9 November 1949. He was survived by his widow, Oh Kee Lee @ Oh Phaik Sim and several children. Upon his

h death, his interest under the 1943 agreement devolved to and became vested in his Estate. Letters of Administration of his estate were granted to two of the deceased's children. In the events which had transpired, the majority of his beneficiaries also died, resulting in their estates becoming the beneficiaries of Chor Bah Say's estate. The appellant and her sister, Chor Phaik Sim are

i the remaining direct beneficiaries of the Chor Bah Say's estate.

By two sale and purchase agreements dated 23 January 1992 (the sale agreements), made between the company and the executors and trustees of the beneficiaries of the Estate of Chor Bah Say, on the one part as vendors, and the respondents as purchasers on the other part, the former agreed to sell the said lands to the latter for RM32,006,000. The appellant and her sister, Chor Phaik Sim, were parties to the said agreements, but as observed by the learned judge, they seemed to have baulked at a later stage and refused to execute the sale agreements on the ground that they did not agree on the price. In the appellant's statutory declaration filed in support of her application for entry of the said caveat under s. 323 of the Code, she clearly stated that she had not agreed to the purchase price of RM32,006,000. She also alleged that the purported sale contravened the 1943 agreement. Hence, on 26 October 1991, the appellant entered the said caveat caveating the whole of the said lands.

On 17 March 1992, the respondents applied to the Penang High Court for the removal of the said caveat under s. 327 of the Code. The application was supported by an affidavit of Lim Yoke Kwai, the respondents' executive director, who deposed that the respondents were the purchasers of the said lands. He was advised and verily believed that by virtue of the sale agreements the respondents were "persons aggrieved" within the meaning of s. 327 of the Code and could apply to remove the said caveat.

***The Judge's Finding***

The learned judge granted the respondents' application for the removal of the said caveat. In his grounds of judgment dated 26 January 1994, he gave the following reasons (Rekod Rayuan Tambahan D-809):

> Having considered the complete and elaborate submissions, oral as well as written, made on behalf of the parties by learned counsel, I was of the view that this application for an order to remove the private caveat entered at the instance of the respondent on the register document of title to the said lands was well founded. I found myself in substantial agreement with the submissions made by learned counsel for the applicant ...
>
> The respondent questioned the locus of the applicant to apply for the removal of the private caveat under s. 327 of the Code. The applicant countered by questioning the capacity of the respondent to enter the caveat under ss. 322 and 323 of the Code. In these circumstances, the onus lay upon the applicant first to prove that it came within the ambit of s. 327(1) of the Code as a person aggrieved by the existence of the caveat to apply for its removal. The applicant would be a person aggrieved if it could show that it had an interest in the said lands which were caveated. That interest depended upon the validity of the agreements entered into and set out in material respects in the earlier part of this judgment. The agreements were severable and enforceable at the option of the applicant against each of the vendors individually ...

His Lordship concluded at p. 811:

> Had the caveat not been entered, the parties to the agreements (including the applicant) would have completed the performance of the agreements. The refusal of the respondent and her sister, Chor Phaik Sim, to be parties to the agreements cannot in any way take away the right of the other beneticiaries to enter into the agreements in respect of their own interest in the estate of the deceased.
>
> I found that the applicant was indeed a person aggrieved by the entry of the caveat in respect of the said lands and therefore was in possession of the necessary capacity to apply for an order for its removal. In the circumstances I made an order in terms of the application herein which included an order for the assessment of damages by the senior assistant registrar as it was evident that the applicant had been prejudiced by the entry of the caveat.

***Submissions***

Before us, Encik Chandran, for the appellant, challenged the correctness of the learned judge's finding on a number of grounds. However, his main ground was on the validity of the sale agreements. Counsel submitted that the respondents could not rely on the sale agreements to justify their status as an aggrieved party under s. 327 of the Code for the following reasons. At the outset, he stated that it was not disputed that the Estate of Chor Bah Say was unadministered at the date of the sale agreements, and the parties recognised that his beneficiaries were beneficial owners of 3/4 undivided share of the said lands. He submitted that in law, a beneficiary of an unadministered estate of a deceased person has no title or interest in the property of the deceased person before administration is completed. Based on this proposition, he argued that so long the Estate of Chor Bah Say, deceased, remained unadministered, the beneficiaries did not have and could not acquire any title to the 3/4 undivided share of the said lands at the date of the sale agreements and such being the case, the beneficiaries of the deceased's estate could not have covenated to convey such title to the respondents under the sale agreements. It followed that the sale agreements relied upon by the respondents have no validity. For his proposition of law, he relied on the House of Lords decisions in *Lord Sudeley v. The Attorney General* [1897] AC 11; *Dr. Barnado's Homes National Incorporated Association v. Commissioners For Special Purposes of the Income Tax Acts* [1921] AC 1; and *Corbett v. Commissioners of Inland Revenue* [1938] l KB 567 which decided that a beneficiary has no interest or title in the property of a testator until his personal estate has been fully administered. According to Encik Chandran, this principle equally applied to a case of intestacy.

Counsel, however, made one qualification that the above cases did not deal with the right of a beneficiary of an unadministered estate to enter a private caveat under the Torrens System applicable to Malaysia. This qualification was important in view of two local decisions in *Khoo Teng Seong v. Khoo Teng Peng* [1990] 2 CLJ 233 and *Tan Heng Poh v. Tan Boon Thong & Ors* [1992] 2 MLJ 1, which dealt, *inter alia,* with the right of a beneficiary of an unadministered estate to enter a private caveat.

Encik Sethu, for the respondent, agreed that in law a beneficiary of an unadministered estate has no title in any property of the testator until the residue has been ascertained and the estate administered as a correct proposition of the law. However, the issue in the present appeal related to the right of a beneficiary under intestacy, where Chor Bah Say, deceased, died intestate. Counsel submitted that the concept of a residuary beneficiary was limited to the estate of a testate deceased, and did not apply to a beneficiary on intestacy where the interest of a beneficiary of an intestate estate was pre-determined by law. He added that being beneficiaries of the estate of an intestate, their rights were ascertained and they could sell their rights in the estate. Counsel, however, did not furnish any authority to support this proposition.

***Legal Proposition***

It must be observed at the outset that there is no clear authority for the proposition that a beneficiary under an intestacy has no interest in the property of a deceased person until the estate has been fully administered. In our view, however, there is much persuasive force in what is stated in the textbook on *"The Law and Practice of Intestate Succession"* by C.H. Sherrin and Bonehill. At p. 93 the learned authors opined as follows:

> Questions accordingly arise as to the nature of the beneficiary's interest under an intestacy during the course of administration. Has he, for instance, an interest which is capable of being bequeathed by his will or of being disclaimed?
>
> There is considerable authority on this point and the answers to the questions posed are to be found in the House of Lords decisions in *Lord Sudeley v. Attorney General*, and *Dr. Barnado's Homes National Incorporated Association v. Commissioners* for Special Purposes of the Income Tax Acts and in the Privy Council decision in *Commissioner of Stamp Duties (Queensland) v. Livingston* [1965] AC 694. **Although these cases were all concerned with testate succession, the principles stated are usually regarded as being applicable equally to the nature of a beneficiary's right on intestacy.** [Emphasis added]. The basic principle appears from the *Barnado's* case, where it was clearly stated:

> When the personal estate of a testator has been fully administered by his executors and the net residue ascertained, the residuary legatee is entitled to have the residue as so ascertained, with any accrued income, transferred and paid to him: but until that time he has no property in any specific investment forming part of the estate or in the income from any such investment, and both corpus and income are the property of the executors and are applicable by them as a mixed fund for the purposes of administration.

We would also refer to a passage in "*Executors, Adminsitrators and Probate* (17 Edn.), 1993" by Williams, Mortimer and Sunnecks which stated at p. 1050:

> A residuary legatee has no interest in a defined part of the estate until the residue is ascertained, nor can income be ascribed to unascertained residue. **His right, which is of course transmissible, is to have the estate properly administered and applied for his benefit when the administration is complete. The right of a beneficiary claiming on a total intestacy is similar,** except that he takes under a statutory trust for sale and conversion. [Emphasis added].

Based on the above commentaries, founded no doubt on the analogous principle of law concerning testate succession, it is our conclusion that in law a beneficiary under an intestacy has no interest or property in the personal estate of a deceased person until the administration of the latter's estate is complete and distribution made according to the law of distribution of the intestate estate.

***Conclusion***

Having decided on the principal legal issue, it is left for us to examine the factual situation to see if the Estate of Chor Bah Say has been fully administered at the time of the execution of the sale agreements.

We need first to look at the 1943 agreement. It is clear to us that the said agreement dealt with the payment of income from the proceeds of sale of such part or parts of Ayer Itam Estate. However, it is common ground between counsel that arising from the said agreement, Chor Bah Say had 3/4 undivided share in the Ayer Itam Estate, which included the said lands.

Upon his death, Letters of Administration of his Estate were first granted to his son and daughter on 13 December 1949 and by a further court Order of 19 March 1954, the appellant became one of the administrators and together with the company they continued to implement the terms of the 1943 agreement. As we have noted earlier, during the course of the administration of the deceased's Estate, the majority of his beneficiaries had also died leaving their respective estates as beneficiaries of the Estate of Chor Bah Say. Upon

reading the Penang High Court judgment in *Oh Phaik Lin & 2 Ors. v. Choong Lye Hock Estate Sdn. Bhd.* [1985] 1 CLJ 280, a case directly involving the administration of the estate of Chor Bah Say, it would appear that his beneficiaries faced considerable problems in administering his estate. Thus far, there seemed to be no evidence that the administrators have wound up his estate.

We move next to examine some of the clauses of the sale agreements. The relevant preambles, *inter alia,* state:

> WHEREAS the Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Vendors are the beneficiaries of the Estate of Chor Bah Say @ Chor Bar Say, deceased and are or are entitled to the beneficial ownership of the remaining three-quarters (3/4) undivided share of the said lands in the respective proportions set out in Schedule B hereto.
>
> WHEREAS the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Ninth Vendors have agreed to sell all their rights, title and interest of **their respective shares in the said lands** to the Purchaser and the Purchaser has agreed to purchase their rights, title and interest in the said lands excluding the portions set out in Schedule D hereto (hereinafter referred to as "the said lands") upon the terms and conditions hereinafter appearing.
>
> WHEREAS the Eighth Vendor has agreed to sell all its rights, title and interest of its **share in the said lands** subject to the approval of the High Court and the Purchaser has agreed to purchase the **Eighth Vendor's title, interest and share in the said lands** upon the terms and conditions hereinafter appearing.

From the above clauses, it is envisaged that the beneficiaries are entitled to the beneficial ownership of the 3/4 **undivided** share of the Estate of Chor Bah Say in the Ayer Itam Estate and that they have agreed to sell their rights title and interest of their respective shares in the said lands which formed part of the Ayer Itam Estate to the respondents as set out in the Schedule thereto.

It is interesting to note from Schedule B to the sale agreements that the respective interests of the beneficial owners in the said lands is stated to be 7.1428571% (except the widow having 25%). This apportionment of the beneficial interest appears to give the impression that the administration of the estate of Chor Bah Say has been completed. Indeed, on the basis of the respective divisible interests of the beneficiaries, counsel for the respondents had contended that the appellant and other beneficiaries of the Estate of Chor Bah Say were entitled to sell their respective interests in the said lands to the respondents because what they purported to do under the sale agreements was to sell their own rights and interests as beneficiaries. In our view, in the absence of clear evidence that the Estate of Chor Bah Say has been fully

administered, the respective interests of the beneficiaries referred to in Schedule B must refer to their beneficial interest in the **undivided** 3/4 share of the Estate of Chor Bah Say in the Ayer Itam Estate.

Having regard to the above observation and the circumstances of the whole case, we are satisfied that at the date of the execution of the sale agreements, the administration of the Estate of Chor Bah Say has not been completed. It follows that until his estate has been fully administered by the administrators and distribution made according to law, the beneficiaries have no interest or property in the Estate of Chor Bah Say so as to give them any title to the said lands. Here, we agree with counsel for the appellant that the beneficiaries of his estate, being vendors of the saids lands under the sale agreements could not have covenated to convey any title to the respondents. In the result, the respondents cannot rely on the sale agreements to justify their status as "persons aggrieved" under s. 327 of the Code. For the above reasons, we are of the opinion that the respondents have not satisfied us that there are sufficient grounds in law or fact for treating them as persons claiming an interest in the said lands as would, if it were established, make them aggrieved by the existence of the said caveat (*Eng Mee Yong & Ors. v. V Letchumanan* [1979] 2 MLJ 212, p. 215).

In the light of the above conclusion, we would allow this appeal with costs here and below. Deposit will be refunded to the appellant. The order of the learned judge dated 18 June 1993 is hereby set aside and the said caveat restored.

We are now prepared to hear submissions from counsel, if they so wish, as to any consequential orders we should make with regard to other sale transactions between the respondents and the beneficiaries of the Estate of Chor Bah Say regarding the remaining lots in the Ayer Itam Estate.

*Reported by WA Sharif*